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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/943,043	08/29/2001	Todd L. Rose	DAKTRONICS	8467

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EXAMINER
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GREEN, BRIAN

ART UNIT	PAPER NUMBER
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3611

DATE MAILED: 10/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application N .</b>	<b>Applicant(s)</b>	
	09/943,043	ROSE, TODD L.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Brian K. Green	3611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 July 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1 and 22-25 is/are allowed.
- 6) ☒ Claim(s) 2-21 and 26-37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 14, 2003 has been entered.

The indicated allowability of claims 2 and 26-30 has been withdrawn in view of the newly discovered reference(s) to Griek et al. Rejections based on the newly cited reference(s) follow.

### ***Claim Rejections - 35 USC § 112***

Claims 3-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 3, line 9 is indefinite since it is not clear what structure is represented by the "means for preventing accidental falls" language. For example, the sign in combination with rail (26) forms the barrier for preventing accidental falls. It appears that the applicant is defining only the rail as the means for preventing accidental falls which appears to be inaccurate. Further, the

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specification fails to clarify what structure is included in the phrase “means for preventing accidental falls”.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 3,4,6,11-14, and 19-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Boatman (U.S. Patent No. 3,988,845).

Boatman shows in figures 1-3 an enclosure (12) including a front panel (10 or 13a,14a,17a,18a) and a means (28) for preventing accidental falls mounted on the top panel (13). The means (28) is a u-shaped member just like the applicant’s means and it would provide some protection from falling over top of the sign. In regard to claim 4, the front panel (10) is considered to be removable as broadly defined, i.e. the rivets used to mount the panel (10) can be broken which would allow the panel to be removed. In regard to claim 11, the enclosure includes a rear panel (20 or 13b,14b,17b,18b). In regard to claims 12-14, the rear panel is considered to be (13b,14b,17b,18b) which includes a cutout which is covered by an access panel (20) which is considered to be removable. In regard to claim 21, the top panel (13) is formed from channel stock, see figures 1 and 3 which shows that the top panel includes portions 13a and 13b.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boatman (U.S. Patent No. 3,988,845) in view of Pick et al. (U.S. Patent No. 2,867,306).

Boatman discloses the applicant's basic inventive concept except for making the rail tubular. Pick et al. shows in figures 1-4 the idea of making a rail (10) tubular. In view of the teachings of Pick et al. it would have been obvious to one in the art to modify Boatman by replacing the rail with the type taught by Pick et al. since this would allow the sign enclosure to be carried in an easier and more comfortable manner as taught by Pick et al., column 1, lines 25-30.

Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boatman (U.S. Patent No. 3,988,845) in view of Bauer et al. (U.S. Patent No. 5,259,089).

Boatman discloses the applicant's basic inventive concept except for making the ends of the rail threaded with nuts engaging the ends of the rails. Bauer et al. shows in figures 1-5 a rail (32,25) having threaded ends (25) and a nut (31) engaging the threads in order to secure the rail to a device. In view of the teachings of Bauer et al. it would have been obvious to one in the art to modify Boatman by replacing the rail with the type taught by Bauer et al. since this would allow the rail to be attached to and removed from the enclosure in a faster and easier manner.

Claims 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boatman (U.S. Patent No. 3,988,845) in view of Tucker (U.S. Patent No. 6,314,669).

Boatman discloses the applicant's basic inventive concept except for attaching brackets to the rear panel. Tucker shows in figures 1-7 the idea of attaching upper and lower brackets (46n, 166, 168, and the bracket below 46n) to the rear panel of a display. In view of the teachings of Tucker it would have been obvious to one in the art to modify Boatman by attaching brackets to the rear panel since this would allow the device to be attached and removed from a vertical support surface in an easier and faster manner.

Claims 31-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tucker (U.S. Patent No. 6,314,669) in view of Surman (U.S. Patent No. 5,522,540).

Tucker shows in figures 1-8 an electronic sign enclosure comprising a front panel (26), a rear panel (24), a cutout in the rear panel that includes an access cover (140) over the cutout, a top panel (20), end panels and bottom panel, and mounting brackets (46n, 166, 168, and the bracket located below 46n) on the rear panel. Tucker does not disclose the idea of sloping the top panel forwardly. Surman shows in figure 5 the idea of sloping a top panel (43) forwardly. In view of the teachings of Surman it would have been obvious to one in the art to modify Tucker by sloping the top panel forwardly since this would allow rain water to run off the panel and help to prevent the device from being damaged by the water and further would create a more aesthetically pleasing display. In regard to claim 35, Tucker shows in figure 4 a top panel (the panel just below panel 20) that is located below the top panel (20). In regard to claim 32, Tucker discloses the use of rivets to attach the rear panel. The use of bolts to attach panels is

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conventional in the art. It would have been obvious to one in the art to attach the rear panel with bolts since this would allow the device to be disassembled in an easier and faster manner which would allow the device to be shipped and stored in a more compact manner. In regard to claims 33,34,36, and 37, it would have been an obvious manner of design choice to make the panels of channel stock since the applicant fails to disclose any advantage to making the panels in the form of channel stock and the non-channel stock used by Tucker would work equally well.

Claims 3-5,11-16,19-21, and 26-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Griek et al. (U.S. Patent No. 5,353,891) in view of Stadjuhar et al. (U.S. Patent No. 5,497,573).

Griek et al. shows in figures 1-9 and edge of a structure (14,18,152, etc.)and a rail (48) for preventing accidental falls. Griek et al. discloses in column 4, lines 64-68 and column 5, lines 1-3 the idea of mounting a sign to the device. Griek et al. does not disclose any of the details of the sign and therefore does not disclose whether the sign includes an electronic enclosure having a front panel and a top panel. Stadjuhar et al. shows in figures 7-11 an electronic sign enclosure (201) that includes a front panel and a top panel and is supported on a framework. In view of the teachings of Stadjuhar et al. it would have been obvious to one in the art to modify Griek et al. by attaching an electronic sign enclosure having front and top panels to the device of Griek et al. since this would allow the message being displayed by the sign to be changed in an easier and faster manner. The rail (48) is considered to be attached to the sign since all of the components of the device are interconnected. In regard to claims 12-14, Stadjuhar et al. shows in figures 8 and 11 the idea of attaching an access panel (260) to the sign.

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Stadjuhar et al. does not disclose placing the access panel on the rear panel. It would have been obvious to one in the art to place the access panel on the rear panel since this would allow easier access to the access panel, i.e. when the sign of Stadjuhar et al. is attached to the device of Griek et al., the easiest access would be from the rear of the sign. In regard to claims 21,28, and 30, it would have been an obvious manner of design choice to make the panels of channel stock since the applicant fails to disclose any advantage to making the panels in the form of channel stock and the non-channel stock used by Stadjuhar et al. would work equally well. In regard to claim 26, the steel structure is considered to be elements (10',12', 38, and the elements attached to them). In regard to claim 27, as broadly defined, the anti-vandal panel is considered to be element (29). In regard to claim 30, Stadjuhar et al. shows a channel top panel (66) below the top panel.

Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Griek et al. (U.S. Patent No. 5,353,891) in view of Stadjuhar et al. (U.S. Patent No. 5,497,573) as applied to claim 3 above and further in view of Voigt (U.S. Patent No. 5,566,926).

Griek et al. in view of Stadjuhar et al. disclose the applicant's basic inventive concept except for threading the ends of the rail and using a nut to secure the rail to the device. Voigt shows in figure 7 a rail (22) that includes a threaded end (the end of bolt 112) and a nut (56) used to secure the rail to the support (20). In view of the teachings of Voigt it would have been obvious to one in the art to modify Griek et al. by threading the ends of the rail and using a nut to secure the rail since this would make the rail more durable and less likely to be pulled from it's supporting surface.



Claims 2,16,17, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Griek et al. (U.S. Patent No. 5,353,891) in view of Stadjuhar et al. (U.S. Patent No. 5,497,573) as applied to claim 11 above and further in view of Anderson et al. (U.S. Patent No. 2,765,554).

Griek et al. in view of Stadjuhar et al. disclose the applicant's basic inventive concept except for using brackets to attach the enclosure. Anderson et al. shows in figures 1-7 the idea of using brackets (40,41) to attach signs (3) to a support. In view of the teachings of Anderson et al. it would have been obvious to one in the art to modify Griek et al. in view of Stadjuhar et al. by using brackets to attach the enclosure since this would allow the enclosure to be attached in a more secure manner.

Claims 31-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Griek et al. (U.S. Patent No. 5,353,891) in view of Stadjuhar et al. (U.S. Patent No. 5,497,573) and Anderson et al. (U.S. Patent No. 2,765,554) as applied to claims 2,16,17, and 18 above and further in view of Surman (U.S. Patent No. 5,522,540).

Griek et al. in view of Stadjuhar et al. and Anderson et al. disclose the applicant's basic inventive concept except the idea of sloping the top panel forwardly. Surman shows in figure 5 the idea of sloping a top panel (43) forwardly. In view of the teachings of Surman it would have been obvious to one in the art to modify Griek et al. in view of Stadjuhar et al. by sloping the top panel forwardly since this would allow rain water to run off the panel and help to prevent the device from being damaged by the water and further would create a more aesthetically pleasing display. In regard to claim 35, Stadjuhar et al. shows in figure 2 a top panel (66) that is located

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below the top panel. In regard to claim 32, Stadjuhar et al. discloses the use of bolts to attach the rear panel. In regard to claims 33,34,36, and 37, it would have been an obvious manner of design choice to make the panels of channel stock since the applicant fails to disclose any advantage to making the panels in the form of channel stock and the non-channel stock used by Stadjuhar et al. would work equally well.

Applicant's arguments filed 7/14/03 have been fully considered but they are not persuasive.

The applicant argues that claim 3 is now allowable in view of the fact that it has been amended to include means by function language which Boatman fails to show. The examiner disagrees since the rail (28) of Boatman is u-shaped just as the applicant's and can perform the function of helping to prevent a person from falling overtop of the sign.

The applicant argues that claim 31 now more precisely defines the sloping top surface of the enclosure which makes the claim allowable over the Tucker patent. The examiner has modified the Tucker patent in view of the Surman patent to show that the use of a sloping top plate is known in the art.

Claims 1 and 22-25 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian K. Green whose telephone number is (703) 308-1011. The examiner can normally be reached on M-F 7am-3:30pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on (703) 308-0629. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-4177.

  
BRIAN K. GREEN  
PRIMARY EXAMINER

bkg  
Sept. 26, 2003